

STATEMENT OF
PROFESSOR FELIX ERMACORA
IN THE THIRD COMMITTEE
2 December 1985

1. I have the honour to present the report on the situation of human rights in Afghanistan in accordance with paragraph 6 of Commission resolution 1985/38 of 13 March 1985.

This is the second report on the human rights situation in Afghanistan, It updates the report which I presented to the Commission on Human Rights in document E/CN.4/1985/21.

The present report takes into account:

- i) the new mandate which the Commission set out in its resolution to consider the situation of human rights in Afghanistan, and in particular, the losses of human life and goods as a result of the bombardments of the civil population;
- ii) the fact that the conflict within Afghanistan has not come to an end and has lasted nearly six years; and
- iii) the events occurring during the last months and consequences resulting from the development of this conflict in regard to the human rights for the people of Afghanistan.

2. I have tried, in accordance with my mandate to establish the relevant facts and to verify them as far as it was possible in the circumstances of the situation in which I am put. Regrettably I have not received any cooperation from the government of Afghanistan. On the other hand I wish to thank the Government of Pakistan which has permitted free access to refugee camps and to hospitals in Pakistan, I was able to contact anyone I desired to meet. I also had the opportunity to discuss the human rights situation of Afghanistan with persons having a first hand knowledge of the situation, to see films and

documents, I studied a large number of newspaper reports from different regions of the world. In particular, I studied all relevant documents available published by the Government of Afghanistan.

I am convinced that I have obtained quite an accurate picture of the situation of human rights in Afghanistan.

3. I am aware that negotiations on a political solution of the problem are going on. I hope that the report presented could strengthen the efforts for a peaceful solution of a situation which, now in its sixth year, has brought so much suffering to the region.

4. The human rights situation in Afghanistan has two facets: i) the situation of human rights as influenced by the internal political developments and ii) the situation on human rights as influenced by the armed conflict existing between the governmental forces and foreign troops on the one side and the opposition movements on the other side.

5. The internal situation on human rights results from a policy which created a confrontation between a government, whose aims are to achieve a modernization of a society whose roots go deeply into the values of a population oriented to religion and faith of an islamic society on one hand, and traditional forces on the other. It is primarily a conflict of cultures which exist in the country. The fundamentalist forces resist the kind of modernization of the society which has been introduced since the so-called Saur revolution (April 1978). It is mainly the methods applied to carry out

the modernization which cause the resistance. The government has tried to overcome this resistance with all available means: the persecution of opponents, the disregard of human rights for all those who are not willing to follow the governmental policy; elements of discrimination of persons adhering to the ruling party against persons who do not adhere to this party.

It is true, the government has incorporated a human rights catalogue within the fundamental principles, a kind of constitution, and the government even adhered to different human rights instruments of the United Nations: the International Convention on the Elimination of All Forms of Racial Discrimination, the United Nations Covenants on Human Rights, the United Nations Convention against Torture.

But Mr. Chairman, a human rights situation does not only depend on statutes and written norms, it depends on the realities of daily life.

In regard to this daily life two important new facts must be stressed before this General Assembly which emerged during the study of the situation of human rights in Afghanistan: the problem of missing persons and the situation within the prisons in regard to so-called political prisoners.

The number of missing persons is much higher than that previously announced (see paragraph 50) and the situation in the Poli Charkhi prison aggravates the position of so-called political prisoners (see paragraph 60). According to an important witness, himself a former member of the Afghan judiciary the arbitrariness exercised in the administration of justice against opponents or presumed opponents of the regime creates an atmosphere of insecurity and anguish (paragraph 60). The jurisdiction of the judiciary is, in fact, superseded by a "political jurisdiction".

6. The external situation of human rights in Afghanistan is characterized by the armed conflict now in its sixth year. This armed conflict, the methods of warfare, its results shock the consciousness of mankind, in particular all those who know that the States involved, including Afghanistan are parties to the relevant international human rights instruments.

7. With the help of private organizations it has been possible to establish statistical data as to losses of life and goods between 1 January and the end of September 1985. Paragraph 86 of the report reproduces statistical data as to these losses. These data came from all sources available to me.

In the course of preparing this report, new facts have emerged which it has also been possible to confirm. It was possible to establish that resort is being had to methods of warfare which are contrary to the obligations undertaken by the governments in question in adhering to the Geneva Conventions and which are also undertaken by the opposition movements. As the very minimum, article 3 of the Geneva Convention must be applied! The principal characteristics of the violent nature of the warfare are:

- the main feature of the warfare is of methods used, which are totally out of proportion to any military requirement, the brutality and the immeasurable human rights consequences for the civil population or those persons who during the combat became wounded or prisoners, such as:
 - the indiscriminate bombardments and killings with special weapons,
 - the use of poisons substances,
 - the taking of hostages and their brutal treatment,
 - the unproportionate acts of retaliation,

- the use of toy-bombs and other anti-personal mines which causes particular harm amongst children and peasants,
- the kind of treatment of prisoners taken by both sides and - last but not least - as I have said before, the increasing brutality of the warfare.

8. Mr. President, the result of this warfare is not only fear and hatred.

The results can be seen in three elements:

- the economic devastation of fertile lands in many parts of the country
- the change in the demographic structure of the country side and in the villages due to the refugee situation in the country, characterized by the problem of internal and external refugees;
- the consequences on the social, cultural, educational life including the breakdown of family units.

All this is substantiated in my report. It cannot be contested that the refugee situation caused by the conflict is aggravating: the stream of refugees has not come to a stand still and nowadays refugees come from nearly all very distant provinces of the country whilst refugees from within the country go to the great urban areas which are thus overcrowded and give rise to slums. Many social, educational and economic problems arise from this situation. The extent to which the specialized agencies of the United Nations with the support of the government can help in this situation remains to be seen.

9. One of the main human rights problems concerns the right to self determination. In my report to the Commission on Human Rights, I recommended that the Afghan government should respect this right in the most common traditional form namely to convene a Loya Jirgha for solving the grave problems within the country. Indeed the government convoked a Loya Jirgha in April 1985. I have studied the composition, the procedure, the resolutions of this Loya Jirgha very carefully. One resolution of the Loya Jirgha is even directed to the Secretary-General of the United Nations and became an official document of the United Nations. I came to the conclusion that the Loya Jirgha - and this is a fact which cannot be contested - is not representative since more than four million refugees were not represented. In other words, the Loya Jirgha could not speak in the name of one third of the population. The appeal to the amnesty degrees which was made in the different speeches cannot be consider as a realistic step for solving the refugee problems. Even if the Loya Jirgha may be considered as a quasi democratic legitimization of the actions of the government including the appeal to foreign forces to solve the conflict militarily, the Loya Jirgha did not constitute a realisation of the right of self determination which is to be considered paramount within the framework of the United Nations Covenants on Human Rights.

10. Mr. Chairman, in this new report I was obliged to refer to a large extend to the recommendations which were already presented to the Human Rights Commission. This shows that the situation of human rights has not improved so far. I would sincerely believe that the situation presents features which create heavy responsibilities not only for the states in question but also for

the whole world community in an age of new humanism. In paragraph 132 I say that every hour lost is detrimental to the population and the human rights situation in the country, in other words the conflict cannot be solved militarily but only politically. Therefore I want to refer to paragraphs 133 to 139 of the report.

It is not the intention of the report to accuse governments but to illustrate a human rights situation which I want to explain further in its legal framework before the next session of the Commission on Human Rights and which underlines the necessity of undertaking all political efforts to solve the problem - not by armed struggle but by political efforts.